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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09:172,689	10-14-1998	ERIC BRYAN BISH	UF-206X	9616

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EXAMINER

MCCORMICK, SUSAN B

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 06/03/2003

23

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/172,689

Applicant(s)

BISH ET AL.

Examiner

Susan B. McCormick

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 18-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### Detailed Action

#### Continued Prosecution

The request filed on December 12, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/172689 is acceptable and a CPA has been established. An action on the CPA follows.

#### Objection to the Declaration

The objection to the declaration is because non-signing inventor's address contains a misspelling of the city's name.

#### Claim Rejections- 35 U.S.C. 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-25 are rejected under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. More specifically the term "abruptly" is not clear how rapidly temperatures must be changed. So the metes and bounds of claims are not clear.

#### Claim Rejections- 35 U.S.C. 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

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Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heide in view of Darrow.

Heide teach a method of inducing flowering in strawberry, comprising reducing temperature and photoperiod (pages 22-23). Heide does not teach a method wherein the temperature is at least 30 °C. Darrow teaches that the cultivated strawberry can be grown where even the wild strawberry is not native i.e. Southern California, Florida and parts of India. Temperatures that strawberries can be grown vary greatly from -60°F to 115°F (page 357).

It would have been obvious to modify the method of Heide by raising the temperature to adapt the method for use with varieties acclimated to warm temperatures. One would have been motivated to do so, given the knowledge that different strawberry varieties are adapted to different temperatures and photoperiods, as taught by Darrow. Thus the invention as a whole was prima facie obvious to a person of ordinary skill in the art at the time the invention was made.

#### Response to Arguments

**Applicant argues** that Heide does not suggest that strawberry plants can be induced to flower by abruptly reducing the daytime temperatures. This is not persuasive as Heide induced flowering by “abruptly” lowering temperature of cool climate varieties from 24°C to 18°C or 12°C. It would have been obvious to do the same with a warm climate variety, starting at a warmer temperature.

**Applicant argues** the Darrow publication does not suggest abruptly reducing the daytime temperature of strawberry plants. This is not persuasive because the rejection is over the combination of references. Lowering the temperature is taught by Heide. Darrow suggests that strawberry plants have such a wide range of adaptability because of genetic variability some of which can be found where the temperatures are extreme and temperatures could be changed drastically due the variability of the climate.

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Conclusion

No claim is allowed.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick whose telephone number is (703) 305-1682. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The fax number for the group is (703) 305-3014 or 308-4242. Fax numbers for before final is (703) 872-9306, after final is (703) 872-9307 and for customer service is (703) 872-9305.

Any inquiry before a final office action is (703) 872-9306 and an after final inquiry is (703) 872-9307. Any inquiry of a general nature or relating to the status of this application should be directed to the Matrix Customer Service Center whose telephone number is (703) 872-9305.

sbm

*Bruce Campell*  
BRUCE CAMPBELL  
SUPERVISOR  
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